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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL LEWIS JACKSON,

Defendant and Appellant.

A114423

(San Mateo County  
Super. Ct. No. SC59604)

The trial court convicted defendant Daniel Lewis Jackson of possession for sale of cocaine base and methamphetamine. (Health & Saf. Code, §§ 11351.5, 11378.) The court found that defendant had four drug-related prior convictions (Health & Saf. Code, § 11370.2, subd. (a)), and sentenced him to 16 years in prison. Defendant contends the trial court erred by denying his motion to suppress the cocaine base and methamphetamine found in the trunk of his car. Defendant claims that police searched the trunk as a result of a second patdown search which was illegal, because the police frisked defendant for contraband not weapons. We disagree and affirm.

**I. FACTS**

We take the facts from the reporter's transcript of the hearing on the motion to suppress. The basis of the motion was that the officers lacked probable cause or consent to search defendant's car. Defense counsel stated at the outset of the hearing that the "focus" was on whether defendant consented to the search or whether the search was justified by an exception to the warrant requirement.

San Mateo Police Officer Anthony Riccardi was assigned to the Neighborhood Response Team, which investigated suspicious narcotics activity. In the summer of 2005, he received information from a citizen informant that there was a high degree of activity involving both cars and people on foot coming and going from 518 East Santa Inez Avenue “on a consistent basis.”

Riccardi showed the citizen informant a photograph of defendant. The informant identified defendant as a person associated with 518 East Santa Inez Avenue, and who “would come and go all day long.” The informant also told Riccardi that defendant drove a black Mercedes Benz, license number 4EOR627, which was usually parked in front of the house or in the driveway.

As a result of this information, Riccardi and other officers “did a little bit of surveillance” of the house, which involved driving by or parking down the street and watching the people coming and going or “hanging out in the front yard.” The officers also took license plate numbers of cars that pulled up to the house and left after their occupants went inside the house for only a few minutes. Riccardi testified this behavior was consistent with narcotics activity.

The surveillance lasted about two weeks. The surveillance team included Officer Ryan Monaghan, who knew that the citizen informant had identified defendant from a photograph as a resident of the house. Monaghan also knew that defendant was “associated with the black Mercedes that was parked there.”

On August 30, 2005, apparently after the two-week surveillance period, Riccardi, Monaghan, and Officer Rodenspiel were driving north on North Delaware Street just before 6:00 p.m. They were in full uniform in an unmarked patrol car. They saw a grey Honda traveling east on Santa Inez Avenue through the intersection with North Delaware. As the Honda crossed North Delaware, the officers “saw [that] it was traveling at a high rate of speed.”

The officers turned right onto eastbound Santa Inez Avenue and fell in behind the Honda, which made a right turn onto southbound Eldorado. The Honda made a wide turn and “was actually traveling down the center portion of the road.” The officers estimated

the Honda was traveling at approximately 35 miles per hour. The speed limit was 25 miles per hour.

The officers conducted a traffic stop because of the speeding violation. The driver of the Honda was defendant. His two passengers, a man and a woman, got out of the car and walked south on Eldorado. Officer Rodenspiel went after the woman passenger.

Officer Riccardi went up to the driver's side of the Honda and recognized defendant as the man associated with 518 East Santa Inez Avenue and who was identified by the citizen informant as involved in suspected narcotics activity. Prior to the traffic stop, Riccardi did not realize the driver of the Honda was defendant or was associated with 518 East Santa Inez Avenue.

Riccardi told Monaghan that defendant was the man whose photograph was identified by the citizen informant, and that defendant was a suspect in ongoing narcotics activity. Monaghan also recognized defendant as a narcotics suspect because Riccardi had showed him the photograph of defendant.

After realizing that defendant was a narcotics suspect, Monaghan asked him if he would submit to a patdown search. Defendant, who had gotten out of the Honda, responded by turning around and holding his arms straight out to his sides. Monaghan conducted an initial patdown search described as "cursory": "Very brief search. I believe the first time I searched [defendant], I basically went over his upper body area, front area and just briefly, like the front of the waistband area, and that was about it. It was just kind of quick." Monaghan did not find anything.

Officer Rodenspiel told Riccardi and Monaghan that he had arrested defendant's female passenger for possession and being under the influence of drugs. Monaghan became concerned: "Based on my training and experience . . . people involved in illegal . . . narcotics transactions or involved in the transportation of narcotics will oftentimes carry weapons upon their person for a number of reasons, including for self-protection. [Another reason] would be if someone is trying to rip off their stash or take their stash of drugs, or money for that matter. I know from this, as well from several training bulletins

and so forth that I have read, that weapons, including guns and knives, can be concealed in very small objects, such as pagers, cell phones, wallets, things of that nature.”

Because of his training and experience and the new information about the passenger, Monaghan asked defendant if he would submit to a second patdown search for weapons to ensure the officers’ safety. Defendant assumed the same position as before, with his arms held out to his sides. While he was patting down the area of defendant’s pants, Monaghan noticed the right front pants pocket was “somewhat bowed open so that I was able to look down into it and see what was in it.” He saw, in plain view, the top of a prescription pill bottle.

Monaghan asked defendant what was in the pill bottle. Defendant responded by reaching into his pocket, pulling out the pill bottle, and handing it to Monaghan. Monaghan examined the pill bottle and saw approximately eight small off-white rock-like objects which he believed to be cocaine base.<sup>1</sup> Monaghan believed defendant possessed the cocaine base for purposes of sale.

Monaghan arrested defendant and searched him incident to that arrest. He found a black key with a Mercedes emblem in his right front pants pocket. Based on the information he had received from Officer Riccardi, Monaghan asked defendant if he had a black Mercedes. Defendant said that he did, and that the car was parked at 518 East Santa Inez Avenue. Monaghan asked defendant if the officers could search the Mercedes. Defendant replied, “Yeah. Go search it.”

The officers found a checkbook and registration in defendant’s name in the glove compartment. The officers opened the trunk of the Mercedes and found eight plastic baggies containing a total of 205.48 grams of cocaine base, a plastic baggie containing 10.10 grams of methamphetamine, about 120 clear plastic bags used for drug packaging, an electronic scale, rubber gloves, razor blades, and tweezers with a white residue on them. Defendant had \$787 in his wallet.

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<sup>1</sup> The pill bottle was later found to contain 1.93 grams of cocaine base.

Defendant testified that he did not give consent to the search of his Mercedes. His female passenger, Melody Parker, testified that after she was arrested she was brought to within eight to nine feet of defendant and Monaghan, and could hear their conversations. She did not hear the officer ask for consent and did not hear defendant give it. Interestingly, she seemed to testify that defendant gave permission for both patdown searches—but she wasn't sure.

Defense counsel primarily argued the issue of consent, but did raise a side issue of whether “the second [pat-down] search [was] in fact a weapons search, or was it really a search for drugs . . . .”<sup>2</sup>

The trial court found that defendant consented to the search of the Mercedes, and that even without consent there was probable cause to justify the search.

After the motion to suppress was denied, defendant agreed to a “slow plea” procedure. He submitted the issue of guilt to the court on the preliminary hearing transcript and documentation of the prior convictions, with the understanding he faced a maximum sentence of 16 years. The trial court found him guilty and found that he had suffered the prior convictions, and imposed the maximum sentence.

## **II. DISCUSSION**

Defendant contends that the second patdown by Officer Monaghan was not justified because the officer was patting him down in a search for contraband, not for weapons. He concludes that the controlled substances found in the trunk of the Mercedes were the fruit of this allegedly illegal second patdown. We disagree because the second patdown search was a valid search for weapons.

We need not engage in a detailed discussion of the Fourth Amendment law of patdown searches. This case is straightforward.

If a suspect is legally detained, a police officer may conduct a limited patdown search for weapons if, under the circumstances, a reasonably prudent person would

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<sup>2</sup> We thus do not find that the issue of the validity of the second patdown was waived. Accordingly, there is no issue of ineffective assistance of counsel in this appeal.

believe that his safety or the safety of others is in danger, i.e., that the suspect is armed and dangerous. The patdown search is justified by the reasonable inferences the officer is entitled to draw from the facts and circumstances in light of the officer's experience. (*Terry v. Ohio* (1968) 392 U.S. 1, 26-27.)

One factor supporting a constitutionally valid patdown search is the propensity of drug dealers to have weapons. (See *People v. Limon* (1993) 17 Cal.App.4th 524, 534-535.) But a patdown search is not constitutionally permissible if its purpose is not to search for weapons, but to search for contraband. (See *Minnesota v. Dickerson* (1993) 508 U.S. 366, 373, 378; see *People v. Dickey* (1994) 21 Cal.App.4th 952, 955-957.)

The issue in this case is a question of fact: in conducting the second patdown, was Officer Monaghan searching for weapons or contraband? The trial court hears and weighs the evidence and determines questions of fact. On appeal, we must indulge in every presumption favoring the trial court's factual determinations, and we must uphold the trial court's express or implied findings of fact so long as they are supported by substantial evidence. (*People v. Loewen* (1983) 35 Cal.3d 117, 123; *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

Officer Monaghan testified that he conducted the second patdown search for officer safety because he was concerned that defendant was armed. He testified that in his experience people who sell or transport drugs often carry weapons, sometimes inside small objects, for their own protection or to protect their money or stash of drugs. It is true that at the beginning of the encounter, before the second patdown, he and his fellow officers had some suspicion that defendant was involved in narcotics activity. Accordingly, Monaghan conducted the first patdown, which was "cursory." But when defendant's passenger was arrested, on probable cause, for drug possession and being under the influence, Monaghan had a greater degree of concern and suspicion that defendant was involved in drug dealing and therefore likely to be armed and dangerous.

The trial court was in the best position to evaluate cross-examination and determine Monaghan's credibility as to why he searched defendant a second time. By denying the motion to suppress, the trial court made an implied finding that the second

patdown was valid, i.e., was a legitimate search for weapons. That finding is supported by substantial evidence.<sup>3</sup>

### **III. DISPOSITION**

The judgment of conviction is affirmed.

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Marchiano, P.J.

We concur:

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Stein, J.

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Swager, J.

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<sup>3</sup> In light of this conclusion, we need not reach the issue of whether defendant consented to the second patdown.